



Public Employees for Environmental Responsibility

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Regional Freedom of Information Officer
U.S. EPA, Region 2
290 Broadway, 26th Floor
New York, NY 10007-1866

April 30, 2014

Other fee category

2014 MAY -6 PM 2:21



USEPA - REG2
PAD - FOIA OFFICE

RE: FOIA REQUEST

Dear FOIA officer:

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, as amended, Public Employees for Environmental Responsibility (PEER) requests information concerning the environmental health of Barnegat Bay and the role that the U.S. Environmental Protection Agency (EPA) is playing in addressing any impairment of that water-body. In particular, we are seeking information about related to the EPA sponsored and New England Interstate Water Pollution Control Commission (NEIWPCC) managed study entitled "Assessment of Nutrient Loading and Eutrophication in Barnegat Bay - Little Egg Harbor" (Kennish, et al 2013).

Specifically, we request the following:

1. Review comments on this study submitted by members of the Technical Advisory Committee (TAC);
2. Professor Michael Kennish's response to those TAC review comments;
3. Documents reflecting the timeline for the finalization of this study; and
4. All communications from January 1, 2010 to present between the New Jersey Department of Environmental Protection (DEP) and EPA Region 2 related to a) water quality standards, b) water quality monitoring, c) water quality assessment, d) impairment, e) TMDL determinations and f) nutrient or sediment policy and/or Guidance with respect to Barnegat Bay and its tributaries.

In a January 21, 2009 memo, President Barack Obama declared the following policy for the Executive Branch:

"The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because



errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve... All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA.”

For any documents or portions of documents that you block release due to specific exemption(s) from the requirements of the Freedom of Information Act, please provide an index itemizing and describing the documents or portions of documents withheld. The index should, pursuant to the holding of Vaughn v. Rosen (484 F.2d 820 [D.C. Cir. 1973] cert. denied, 415 U.S. 977 [1974]), provide a detailed justification for claiming a particular exemption that explains why each such exemption applies to the document or portion of a document withheld.

To the extent that EPA needs to perform a detailed review, PEER requests that all fees be waived because “disclosure of the information is in the public interest . . . and is not primarily in the commercial interest of the requestor” (5 U.S.C. 552 (a) (4)(A)):

1. The subject matter of the requested records must specifically concern identifiable operations or activities of the government.

The FOIA request is, by its terms, limited to identifiable activities of EPA, its contractors and grantees.

2. For the disclosure to be “likely to contribute” to the understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request.

Barnegat Bay provides recreational outlets for one of the most densely populated areas in the U.S. Many of its waters are listed as impaired and mounting evidence suggests that the Bay’s waters may suffer declining quality.

The records PEER seeks would indicate the true state of Barnegat Bay’s water quality and what the responsible federal and state agencies are doing about it. In short, the requested records are the most meaningful documents that could be requested on the topic of what is being done to save Barnegat Bay.

3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requestor or a narrow segment of interested persons.

Barnegat Bay is listed as a nationally significant estuary. The environmental health of U.S. estuaries is of broad public concern.

In addition, Barnegat Bay is an important commercial and recreational resource for millions of residents and visitors from across the country. Prospects for restoring its non-impaired state of water quality is a topic of broad public interest, as measured by, among other things, the amount of media coverage the health of the Bay receives.

Further, Barnegat Bay offers a textbook example of how effectively the mandates of the Clean Water Act are being implemented by EPA and its state partner, the DEP. The subject matter of this request concerns the strategy for addressing one of the biggest Clean Water Act challenges facing EPA Region 2.

The general public also has a keen interest in any factor bearing on the interaction between state and federal government agencies, particularly when it affects anti-pollution protections.

PEER intends to provide the requested information to the general public through —

- Release to the news media;
- Posting on the PEER web page which draws between 1,000 and 10,000 viewers per day; and
- Publication in the PEER newsletter that has a circulation of approximately 20,000, including 1,500 environmental journalists.

PEER has a long track record of attracting media and public attention to the internal records of federal agencies, including EPA. Moreover, PEER believes that EPA also considers this information is of interest to the general public as evidenced by the display of material about this topic on its own website.

4. The disclosure must contribute “significantly” to public understanding of government operations or activities.

The information requested should shed some direct light on the coordination (or lack thereof) between state and federal agencies. The requested documents will show whether EPA and DEP are acting in concert, on parallel but separate paths or at cross purposes on a major pollution issue.

The documents will also show whether there is a back channel of communication between agencies that directly affects regulatory decisions that is not otherwise transparent.

Finally, the documents will illustrate how the positions of the EPA and DEP have evolved over the past four plus years.

5. The extent to which disclosure will serve the requestor’s commercial interest.

Disclosure is in no way connected with any commercial interest of the requestors in that PEER is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation’s resources and with supporting professional integrity within public land management and pollution control agencies. To that end, PEER is designated as a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code.


6. The extent to which the identified public interest in the disclosure outweighs the requestor’s commercial interest.

As stated above, disclosure is in no way connected with any commercial interest of the requestors

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If you have any questions about this FOIA request, please contact me at (202) 265-PEER. I look forward to receiving the agency's final response within 20 working days.

Cordially,

A handwritten signature in dark ink, appearing to be 'JR' followed by a long horizontal flourish.

Jeff Ruch
Executive Director